



Town of Arlington  
Department of Health and Human Services  
Office of the Board of Health  
27 Maple Street  
Arlington, MA 02476

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**Board of Health Meeting Agenda  
Wednesday, September 13, 2017  
Ground Floor Conference Room  
Arlington Senior Center  
5:30pm**

- I. Accept June 21, 2017 Meeting Minutes
  - II. HEARING: Amendments to Regulations Restricting the Sale of Tobacco and Nicotine Delivery Products
  - III. DISCUSSION: Adoption of Food and Drug Administration (FDA) 2013 Food Code
  - IV. DISCUSSION: SNAP gap
  - V. Coalition Updates
  - VI. Environmental Updates
  - VII. Restaurant Updates
  - VIII. Public Health Nurse Updates
  - IX. Public Comment
- Adjourn



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**D R A F T**  
**Board of Health Meeting Minutes**  
**Wednesday, June 21, 2017**  
**BOH Conference Room**  
**Arlington Senior Center**  
**5:30pm**

Board Members in Attendance: Dr. Marie Walsh Condon, Dr. Kevin Fallon, Mr. Kenneth Kohlberg

Staff in Attendance: Christine Bongiorno, Director; Natasha Waden, Health Compliance Officer; Kylee Sullivan, Health Compliance Officer; Jessica Kerr, Public Health Nurse, Ivy Schmalzried AYHSC.

Others in Attendance: Valerio Romano, VGR Law Firm; Tasha Pleasant, Ray Laham, Ken Leitner, Maureen Lee, Danbi Choi, Victoria Hogan, Paumi Joseph, Donald Leone

Recording Secretary: Laura Munsey, Health & Human Services Administrative Assistant

**Meeting called to order by Dr. Marie Walsh Condon at 5:32 pm.**

A motion was made by Mr. Kenneth Kohlberg, which was seconded by Dr. Kevin Fallon to accept the May 24, 2017 meeting minutes as submitted.

Vote: 3 – 0 (Unanimously) in favor of the motion

**Presentation: 2013 Food Code – Maureen Lee**

Ms. Waden introduced Ms. Maureen Lee, who is a Consultant working with the Health Department as part of the AFTO Grant regarding implementation of the Voluntary Retail Food Standards.

Ms. Lee informed the Board that the Health Department is currently using the 1999 Food Code which was adopted in 2001. She stated the 1999 Food Code introduced requirements for certification and training of Inspectors. The 2013 code emphasizes executing and applying that knowledge. She reported that the State is currently working towards adopting the 2013 food code as well, and stated there is a large gap between the 1999 food code and the 2013 food code.

Ms. Lee stated that many food establishments have provided feedback that they believe foodborne illness is not from establishments but rather from farms, processing plants, or packaging facilities. However, Ms. Lee stated that the CDC reported that between 2013 and March of 2015 88% of all documented foodborne illnesses were caused by single food locations.

Ms Lee stated the following reasons to implement the 2013 Food Code:

- Advances in food safety are reflected in the 2013 Food Code which improves controls for reducing foodborne illness
- Enhances communication and eases frustration
  - Consistency between FPM certification and 2013 food code aligns certification training with enforcement expectations
  - Enforcement consistency with surrounding communities

Ms. Lee informed the Board that some of the changes in adopting the 2013 Food Code would include: new inspection forms, signs are required in establishments to notify public that inspection information is available, stronger requirements for cleaning and sanitizing food contact surfaces used for preparation of raw foods, and new requirements for Reduced Oxygen Packaging (ROP) that better address emerging trends. She further stated that critical violations are needed to be corrected prior to the Inspector leaving the establishment.

As part of the process the Health Department would need to identify key stakeholders, develop a training program, conduct key stakeholder training, and create an enforcement strategy.

Ms. Lee stated there will be a progressive approach for training and implementation. Ms. Waden stated it is the hope of the Health Department to adopt the new code by 2018, and that the Department would reach out to stakeholders and the new code would be rolled out over time. Ms. Waden said funding to implement the new standards would be partially funded through the AFTO grant (which would include printing new forms) as well as through Capital Funds (for new inspectional software). She stated the AFTO grant covers Standards 1, 2, and 4.

#### **Hearing: Tobacco/Nicotine Delivery Product Sales Violation – Symmes Mini Mart**

Inspector Sullivan informed the Board that on Thursday June 8<sup>th</sup>, 2017 the Arlington Board of Health, in collaboration with the 5 Community Collaborative, conducted a compliance check of all permitted retail tobacco vendors in town. She stated that at 7:41 pm, a Symmes Mini Mart employee sold a Blu classic e-cigarette to two 17 year old girls. Inspector Sullivan informed the Board that this is the 1<sup>st</sup> violation for Symmes Mini Mart since the July 1, 2013 regulations were adopted, and recommended a \$100 fine and 7 consecutive day suspension for the sale of tobacco/nicotine delivery products.

Mr. Raymond Laham of Symmes Mini Mart addressed the Board and explained that a gentleman who works for him on nights that the Managers are off sold the product, and was unaware that the e-cigarette contained nicotine. Mr. Laham stated, he will talk with all employee's and will put a sign on the register as a reminder to all employees. He apologized for the error, and stated it was a mistake and a wake-up call for all employees.

Dr. Walsh Condon reported this is the first violation referenced for this establishment, and she hopes they will resume their prior track record regarding violations.

**A Motion** was made by Mr. Kenneth Kohlberg, which was seconded by Dr. Kevin Fallon, to enforce the Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products resulting in a \$100.00 fine and a 7 consecutive day permit suspension of tobacco and nicotine delivery products issued to Symmes Mini Mart.

**Vote:** The Board voted unanimously (3 - 0) in support of the motion.

### **Hearing: Housing Code Violations – 108 Broadway**

Inspector Sullivan informed the Board that on April 24, 2017 the Health Department received a call from resident Tasha Pleasant, requesting a comprehensive housing inspection of her dwelling at 108 Broadway, Unit 7 which was owned by Mr. Donald Leone. Ms. Pleasant requested the inspection prior to terminating her lease at the end of June 2017. Inspector Sullivan and Public Health Associate Charlotte Gray conducted an inspection on May 4, 2017. The inspection revealed 5 violations of the State Sanitary Code 105 CMR 410.000 including:

1. no carbon monoxide alarm in the unit,
2. a window lock that was not working,
3. the air conditioning unit did not turn on and thus was not functioning as intended,
4. the thermostat was in disrepair as the cover was detached from the body of the unit, and
5. the kitchen ceiling light fixture did not turn on and thus was not functioning as intended.

Inspector Sullivan received a letter from Attorney Kenneth Leitner, on behalf of Mr. Donald Leone, dated May 23, 2017 requesting a hearing. Inspector Sullivan conducted a re-inspection on June 15<sup>th</sup> and found the window lock was working, and verified that there were no combustion equipment present in the dwelling and all equipment was electrical, therefore would like to modify the order letter to strike violations 1 and 2, and move forward with violations 3 through 5.

Attorney Ken Leitner, Representative for Mr. Donald Leone, addressed the Board and stated a letter was sent by a Constable to Ms. Pleasant to request access to make repairs and there was no response. He stated that without the Tenants permission they would be forced to have the Arlington Police Department accompany them to the unit. He further stated that regarding the air conditioning unit (violation 3), he was not provided pictures and does not know why it is not working, and is not sure if there is a broken or missing switch. He further stated air conditioning is not part of the lease or a requirement of the State Sanitary Code, and stated on the day of inspection it was only 63 degrees. Regarding the thermostat cover (violation 4) he stated that the heat does work, and perhaps the cover just needs to be snapped back on, and regarding the light fixture in the kitchen (violation 5) he stated it may be a fuse or even just a broken bulb. Attorney Leitner stated that in the lease it is the Tenants responsibility to inform the Landlord of maintenance or repair matters, and reported Ms. Pleasant did not report these problems to the Landlord. Attorney Leitner stated that he believes this is a serious matter, and the Landlord, Mr. Leone, has never received a complaint in the past, has never been before the Board of Health, owns several properties, and requested the matter be dropped.

Inspector Sullivan stated that although air conditioning is not required by the code, when it is provided at the time of rental, it does need to be maintained in working order. She further stated that based on the Code the remaining 3 violations would need to be corrected.

The Board inquired if the tenant were to give permission to gain access to the unit to correct the violations, would the matter be resolved? Mr. Leone stated repairs could be made at 10:00 am on Thursday morning of this week, (or the following Tuesday, Wednesday, or Thursday). Mr. Leone further stated, he would require that the tenant or her representative be present, because his workers are afraid to go into the unit because they were previously accused of moving Ms. Pleasant's personal items.

Ms. Tasha Pleasant addressed the Board. She stated she has not received any calls or emails from Mr. Leone to gain access to the unit for repairs. She stated early on in her occupancy, there were issues where the garbage disposal, and dishwasher were not working properly. She also referenced that the sink and tub kept backing up. She stated that when she reported the problem, she was accused of breaking the equipment. She confirmed that she would absolutely allow access to the apartment for repairs, but she works full time, and would need time to find a representative to be present during that time. Ms. Pleasant stated, that because of her past experience with the Landlord she was fearful of retaliation, and therefore contacted the Board of Health to document the condition of the unit.

Dr. Marie Walsh-Condon negotiated a resolution, stating that the remaining three violations (3 through 5) do not fall under the category of endangerment, and whereas the Tenant, Ms. Pleasant, will be moving out the end of June, the order letter to correct violations 3-5 will be extended to the 2nd week of July (July 14, 2017). It was further noted that maintenance work will not begin until Ms. Pleasant vacates the property at the end of June. Both parties agreed to this compromise.

**A Motion** was made by Mr. Kenneth Kohlberg, which was seconded by Dr. Kevin Fallon, to hold this matter over until July 14, 2017 at which time a reinspection of the unit will be conducted by the Health Department.

**Vote:** Unanimous (3-0) in support of the motion.

### **Hearing Continued: Permit to Operate a Registered Marijuana Dispensary – 11 Water Street**

Inspector Waden briefly summarized the discussions of the previous meeting, including concerns raised, and confirmed that each of the Board Members received the supplemental informational packet provided by Attorney David Ullian of Vicente Sederberg LLC regarding the Massachusetts Patient Foundations Application to operate a medical marijuana dispensary at 11 Water Street, Unit 3B. Provided to the Board were draft copies of the patient handbook, dispensary agent training procedures, information regarding product labels, handling potential capacity issues, policy regarding providing medical advice to patients, prohibition on sale of seeds for hardship cultivation, and prohibition of on-site consumption.

Through discussions it was determined that all of the previous concerns raised by the Board have been satisfactorily addressed. Further discussions took place regarding conditional approval, taking into consideration, but not limited to:

- Permitting Fee
- Dispensary Agent Permits and Fees
- Proof of Final Certificate from State Department of Public Health
- Surety Bond
- Finalized Handbook Approval
- Annual Community Meeting
- Confirmation that no lottery, tobacco or nicotine delivery products will be sold on site
- Pre-Operational Inspection

Attorney Valerio Romano stated that the target date to open would be the 1<sup>st</sup> or 2<sup>nd</sup> quarter of next year.

**A Motion** was made by Dr. Kevin Fallon, which was seconded by Dr. Marie Walsh Condon to conditionally approve the permit for Massachusetts Patient Foundation to Operate a retail registered marijuana dispensary located at 11 Water Street, Unit 3B, Arlington, Massachusetts.

**Vote:** Unanimously (3-0) in support of the motion.

#### **Hearing: Amendments to Regulations Restricting the Sale of Tobacco and Nicotine Delivery Products**

The Board held discussions regarding amendments to the Regulations Restricting the Sale of Tobacco and Nicotine Delivery Products. The Board discussed the total number of permits that would be allowed in town, and recommendations related to capping the total number of permits allowed.

Inspector Waden and Director Bongiorno will work with DJ Wilson, and Town Counsel to review the existing regulations and make final recommendations regarding the proposed amendments at the September meeting.

#### **Coalition Updates**

Ms. Ivy Laplante Schmalzried updated the Board on the Massachusetts House and Senate legislative amendments regarding the sale of recreational marijuana. She reported that both the House and the Senate have proposed different changes to the law and at this time, no consensus has been made.

Director Bongiorno stated that Arlington Town Meeting voted a moratorium on allowing any recreational marijuana dispensaries in town until June of 2018, which would allow the State the opportunity to amend the legislation. Director Bongiorno stated she would provide any important updates regarding this matter to the Board Members over the summer season.

Ms. Schmalzried informed the Board that the Coalition would like to host a Youth Marijuana Use Prevention Forum this fall, and recent student suspensions regarding marijuana use at Ottoson Middle School, and Arlington High School were discussed.

#### **Environmental Updates:**

- Inspector Waden stated that the collaborative effort to help control the rodent issues in Arlington Center is making progress, and stated that DPW has removed the soil in planters in Broadway plaza, and Environmental Health Services has installed mesh borders around the Uncle Sam Visitor Center.
- Pools and Bathing Beaches have been inspected and permitted.

#### **Restaurant Updates**

- LaFamilia is closed (no additional information is available at this time)
- Twyrl will be opening soon, and has a pre-operation inspection scheduled for Friday June 23, 2017.

#### **Public Health Nurse Updates**

Inspector Waden introduced Ms. Jessica Kerr, Public Health Nurse, to the Board. Ms. Kerr expressed her excitement for the opportunity to work with the Board of Health. She stated she has taken the 1<sup>st</sup> Month to familiarize herself to the Department, has been trained in MAVEN, has attended an Emergency Preparedness Meeting. She also reported she has met with Sue Franchi, School Nurse Leader, and has visited each school taking the opportunity to meet with and collaborate with all the school nurses and discuss future flu clinics at all the schools.

#### **Other**

- Director Bongiorno informed the Board that interviews for the Director of Public Health will begin on Friday June 23<sup>rd</sup>, and Dr. Marie Walsh Condon will sit in on the first round.
- A request was made by Mr. Kenneth Kohlberg to reschedule the September 6, 2017 Board of Health Meeting.

A **Motion** was made by Dr. Kevin Fallon, which was seconded by Dr. Walsh-Condon to reschedule the September 6, 2017 Board of Health Meeting to Wednesday, September 13, 2017.

**Vote:** Unanimous (3-0) in favor of the motion.

#### **Public Comment**

None

**Meeting was adjourned at 6:58 pm.**

DRAFT





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**MEMO**

To: Board of Health Members

From: Natasha Waden, Public Health Director

Date: September 8, 2017

RE: Amendments to Tobacco/Nicotine Delivery Product Sales Regulation

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As discussed at our last meeting (June 21, 2017) potential changes have been made to the Regulations Restricting the Sale of Tobacco Products and Nicotine Delivery Products. Enclosed you will find the relevant sections of the regulations which pertain to capping the number of permits issued in the Town of Arlington. Specifically, draft changes have been made to Section E: Tobacco and Nicotine Delivery Product Sales Permit: # 13 and 14.

In summary, the proposed language suggests reducing the number of sales permits by attrition and recognizes potential applicants that have been placed on a waiting list.

#### **E. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMIT:**

1. No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail establishments within the Town of Arlington without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Arlington Board of Health. Only owners of establishments with a permanent, non-mobile location in Arlington are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in Arlington.
2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Arlington Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco and nicotine delivery product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.
4. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be \$500.00, renewable on January 1.
5. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products.
6. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and federal and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.
8. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
9. Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

10. Issuance and holding of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies, including, but not limited to, minimum retail prices of tobacco products.

11. A Tobacco and Nicotine Delivery Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.

12. Mandatory retailer training: As part of the Tobacco and Nicotine Delivery Product Sales Permit renewal process, permit holders are required to send at least one (1) employee who works on the premises to a tobacco retailer training conducted by the Arlington Board of Health once per year. The Arlington Board of Health will schedule the trainings and notify permit holders of the date (s). Failure of the establishment to send a retailer may result in suspension or revocation of a permit to sell tobacco and nicotine delivery products in the Town of Arlington.

13. Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits: The maximum number of permits allowed shall be nineteen (19), reduced by the number of permits not renewed pursuant to Section E (14).

14. As of January 1, 2018, any permit not renewed within thirty (30) days of expiration either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Arlington Board of Health and shall be permanently retired by the Board of Health, reducing the total allowable number of permits under Section E (13) to the applicable number of retired permits. Any potential applicant that has been placed on the waiting list as of January 1, 2018 will have an opportunity to apply for a permit when it is returned to the Board of Health; however this opportunity will expire on January 1, 2020. As of January 1, 2018 the Arlington Board of Health will no longer add potential applicants to the waiting list.

15. Any permit holder who has failed to renew an existing permit within 30 days of expiration will be treated as a first-time permit applicant.

16. A purchaser of a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and/or nicotine delivery products. An owner of a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit that intends to change the physical location of the business in Arlington must notify the Board of Health in writing thirty (30) days before such change of location occurs. The permit will be reissued reflecting the continuation of said business at the new address. Any permit holder who has failed to notify the Board of Health in writing thirty (30) days before changing the physical location of the business will be treated as a first-time applicant.

**F. CIGAR SALES REGULATED:**

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.
2. This Section shall not apply to:
  - a. The sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
3. The Arlington Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

**G. PROHIBITION OF THE SALE OF BLUNT WRAPS:**

No person or entity shall sell or distribute blunt wraps in Arlington.

**H. PROHIBITION OF THE SALE OF FLAVORED TOBACCO AND NICOTINE DELIVERY PRODUCTS:**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco or nicotine delivery product at retail, except in retail tobacco stores.

**I. FREE DISTRIBUTION AND COUPON REDEMPTION:**

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No means, instruments or devices that allow for the redemption of all tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

**J. OUT-OF-PACKAGE SALES:**

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

**K. SELF-SERVICE DISPLAYS:**